



STATE PERSONNEL DIVISION, DEPARTMENT OF ADMINISTRATION • ISSUE 13 • APRIL 2004

## ***2007 biennium pay negotiations begin***

State negotiators met with representatives from the two largest state employee unions April 21 to begin bargaining for the 2006-2007 biennium. The Montana Public Employees Association (MPEA) and MEA-MFT represent a combined 5,100 state employees. The unions identified their broad bargaining interests: salary increases, employer contributions to insurance premiums, state teachers salary schedule, longevity, leave, training initiative, union leave, and retirement. State negotiators conveyed the Office of Budget and Program Planning's (OBPP) most recent projections. OBPP estimates a \$40 million shortfall for the 2007 biennium (present law funding levels with a \$50 million ending fund balance).

Traditionally, the agreements reached at this bargaining table set the trend for pay and benefit increases throughout the executive, legislative and judicial branches. Annual personal service costs for all state employees at present law will reach \$702.5 million by June 30, 2005. That means a 1 percent across-the-board increase will cost roughly \$21 million (\$8.5 million general fund).

### **Highlights**

**Investigating computer misconduct**      **Page 3**

**Arbitration roundup**      **Page 4**

Negotiations will continue throughout the executive planning process with the goal of reaching agreement by November 15, 2004. State negotiators will advance proposals by late summer or early fall when more is known about revenues.

***The bargaining team*** - Most of the 35 MPEA and MEA-MFT bargaining units will be represented in these negotiations. Following is the most recent list of unit representatives and alternates:

Agency	Unit	Representative	Alternate
Agriculture	Agriculture	Kim Johnson	None assigned
Corrections	Probation & Parole	Bob Passiciou	M. Toushette
Corrections	Pine Hills Custody	Mark Winkley	Dean Henman
Corrections	Pine Hills Teachers	Bob Cramer	None assigned
Corrections	Montana State Prison	Steve Hatcher	Kim Hatcher
Corrections	Womens Prison	John Bromberg	None assigned
Environmental Quality	Environmental Quality	Alan Harbaugh	None assigned
Fish, Wildlife & Parks	Game Wardens	Jason Snyder	Dave Loewen
Fish, Wildlife & Parks	Biologists	Quentin Kujala	None assigned
Justice	Highway Patrol	Scott Swingley	Cal Janes
Justice	Drivers Examination	Milo Coladonato	None assigned
Justice	Communications	Rose Fitzpatrick	None assigned
Justice	Registrar's Office	Jean Malcom	Victoria Smith
Justice	Criminal Investigations	Ken Thompson	None assigned
Labor & Industry	Labor & Industry	Clint Jatkowski	None assigned
Military Affairs	Youth Challenge	Lisa Boka	None assigned
MPERA	MPERA	Ian Steel	None assigned
Public Instruction	Public Instruction	Nancy Hall	None assigned
Public Health	Central Office	Karen Whyde	None assigned
Public Health	MDC Professionals	Don Alsager	None assigned
Public Health	MMHNCC	Susan Westhoff	Frank Westhoff
Public Health	Social Workers	Tracy Tillinger	None assigned
Public Health	QAD & HP	Clint Ohman	None assigned
Public Health	Public Assistance	Mike Bright	None assigned
Public Health	MSH Care & Service	Tom Glovan	None assigned
Public Health	MSH LPNs & Profs	Sue Riesenbauer	None assigned
Revenue	Revenue	Joe Rask	None assigned
Transportation	Non-maintenance	Tim Fellows	None assigned

***Release time*** – The state has agreed to provide a reasonable amount of release time to one representative from each bargaining unit to attend each bargaining session, provided the release time does not exceed eight hours or put the representative in an overtime status.

Bargaining team members have been instructed to use their normal chain of command to requesting release time.

# ***Investigations into computer misconduct work best with an HR/IT team approach***

**by John Daugherty, Chief  
Information Technologies Bureau  
Department of Corrections**

Several years ago our Department began to see a rise in the number of employee misconduct complaints (non-criminal) involving the use of computers. The standard approach at that time was to have someone in Information Technology (IT) look at the computer to make a determination regarding the allegations. It was not long before we realized that simply looking at a computer for evidence of misconduct was not enough, so we began to plan a better methodology.

The first steps were identifying who would perform these investigations and what procedures would be used. Before long it became quite obvious that IT could not perform these functions in isolation.

We formed an informal working group consisting of staff from Human Resources (HR) and IT, adding resources from Legal when necessary. In case you haven't noticed, HR and IT don't speak the same language, which made it very

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important that these individuals had the ability and willingness to learn from each other.

Once the team had been established, training became necessary for both HR and IT. The team members attended an introductory class in computer investigations. Currently the IT member continues to train using publications, on-line training, and classroom training with a goal of staff becoming certified in this area. The HR staff member has taken specialized training on how to use information obtained from an investigation in the presentation of grievance arbitration cases.

And finally, the Department made a small investment in specialized hardware and software in order to perform these investigations in a way that does not taint the evidence and will stand up in arbitration or court. For example, in a recent situation, a terminated employee sued the agency. When the Department presented to the employee's attorney evidence obtained from the employee's computer, the employee dropped the lawsuit. This outcome saved the Department substantial costs we would have incurred had the case gone to court.

While we are still learning and developing our procedures, we have learned several important lessons. Communication, documentation, and methodology are key to the successful outcome of any computer investigation.

### ***Recommended reading:***

*"Electronic Crime Scene Investigation A Guide for First Responders" US Department of Justice* <http://www.ncjrs.org/pdffiles1/nij/187736.pdf>

*"Searching and Seizing Computers and Related Electronic Evidence Issues" US Department of Justice* <http://www.usdoj.gov/criminal/cybercrime/searching.html>

*"Computer Forensics Incident Response Essentials" Warren G Kruse II and Jay G. Heiser*

*"Handbook of Computer Crime Investigation" Eoghan Casey*

## ***Arbitration roundup***

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*Each arbitration case involves specific bargaining histories, contract language and facts that could be unique to the agency involved. Contact your labor negotiator in the Labor Relations Bureau if you have questions about how similar circumstances might apply to language in your agency's collective bargaining agreement.*

### **Pornography case illustrates how management can identify and effectively deal with computer misuse**

The grievant was employed in a professional-level state government job in an eastern Montana community. He was eventually discharged for accessing pornography from his state desktop computer. The grievant's computer was connected to a wide area eastern Montana network, with a hub in Billings that links with networks in other state agencies. That network is connected to a statewide area network consisting of more than 10,000 computers, centered in Helena, which is linked to the Internet and administered by the Information Technology Services Division (ITSD) of the Department of Administration.

The day of September 11, 2001, was a busy day in America for reasons that would eventually complicate the investigation of the suspected computer misuse. During the early afternoon of September 10, 2001, an ITSD staff member in Helena observed that an increase of Internet access by several state computers was slowing the state's Internet-related business. One of the computers was the computer assigned to the grievant, who was employed outside the Department of Administration. The ITSD staff member could observe that many of the names of approximately 184 websites the grievant's computer had accessed appeared to be pornography sites or sites that appeared to feature pictures of nude children or young adults.

The ITSD staff member immediately contacted the IT manager in the department where the grievant was employed. ITSD provided that department's IT manager with data to verify exactly which desktop computer in eastern Montana had accessed the pornography. ITSD also supplied a list of websites the computer had accessed. By the late afternoon of September 10, 2001, the IT managers and program managers in the

grievant's workplace formed a plan to promptly remove him from the workplace and investigate the suspected computer misuse.

The next morning, terrorists attacked the World Trade Center and the Pentagon. By the afternoon, management had suspended the grievant from his job with pay, pending an investigation into his computer use. Management took the grievant's keys before sending him home. Management unplugged the grievant's computer, sealed his office by changing the locks on the doors, contacted the local county attorney's office and the Federal Bureau of Investigation. Later in the day, management followed up with a letter of suspension to the grievant. The letter stated he was suspended with pay because management suspected he had accessed child pornography in violation of agency computer use policies. Management asked the FBI to have an agent travel from Billings to the grievant's workplace to take possession of the computer.

The grievant's office remained sealed until 2 p.m. on September 14, 2001, when an FBI agent assigned to crimes against children across the Internet arrived at the workplace to seize the computer, the keyboard and the mouse. The FBI's investigation of the grievant was delayed by the terrorist attacks in New York and Washington. In fact, at the time the discharge grievance went to arbitration months after the discharge, the FBI had not yet completed the investigation.

The department in which the grievant was employed assigned a state investigator to the case. The employer's investigation was complicated by the fact the FBI had the grievant's computer and the employer had no access to it. In the employer's investigation, the grievant claimed he never intentionally accessed pornographic websites from work. He said he inadvertently accessed porn sites at work in June of 2001 while conducting work-related research. The grievant told the employer's investigator it did not make sense to conclude he had accessed the porn sites on September 10, because he knew a lot about computers and could have "covered his tracks" had he done so.

***Among the software discovered on the computer was an unauthorized downloaded "incinerator" program designed to "cover the tracks" of the computer user by destroying records of sites the computer has accessed.***

Eventually the FBI provided the employer with more data on the grievant's computer. Among the software discovered on the computer was an unauthorized downloaded "incinerator" program designed to "cover the tracks" of the computer user by destroying records of sites the computer has accessed. Because of the incinerator software, there was only one day's worth of evidence, but it yielded proof that the computer on September 10, 2001, had accessed approximately 184 websites featuring "young adult pornography, child pornography or nude photographs of young children."

The grievant, whom the employer had removed from the workplace immediately upon discovering the computer misuse, never went back to work. The employer discharged him after holding a pre-termination due-process meeting. The grievant's defense was a claim that he had never accessed pornography on September 10, 2001. He and the

union asserted that maybe someone else entered his office and accessed the pornography, or maybe someone else hijacked his computer browser from a remote location. Simultaneously, the grievant and union also offered as a defense their opinion that the pornography had not been proven to be illegal child pornography. They argued the fact the FBI had not pressed criminal charges should cause the grievant's discharge to be overturned.

Arbitrator Thomas Levak did not believe the grievant's denials or care whether the pornography was legal or illegal. *"Whether most or even all of the websites that the grievant accessed would have been legal for him to possess at home is not the point,"* Levak wrote.

*"Because the grievant's policy violations were abhorrent and egregious, the Arbitrator finds that the employer reasonably determined that his years of satisfactory service was entitled to no weight. The grievant was terminated for just cause."*

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## ***Lessons to be learned:***

- ✓ ***Unplug the computer from the wall to preserve evidence. Don't power down from the keyboard or from the power switch on the computer box.***
- ✓ ***Secure the computer so no one can access it.***
- ✓ ***Make detailed records (notes and even photographs) of the confiscation of the computer. Take a photo of the computer screen before unplugging it or touching it at all. Take a photo of the act of unplugging it. Photograph the serial number and the acts of securing the computer.***
- ✓ ***Ask the Information Technology Services Division as soon as possible for logs of Internet access records.***
- ✓ ***Keep relevant records (notes, dates, times, phone conversations, names, e-mails) to substantiate the steps taken in the investigation.***
- ✓ ***Arrange with the appropriate state IT professionals to have a copy of the computer "hard drive" made without tainting or jeopardizing any of the evidence on the hard drive.***

***Questions, comments or suggestions? Contact the Labor Relations Bureau or visit our website: [www.discoveringmontana.com/doa/spd/css](http://www.discoveringmontana.com/doa/spd/css)***

<b>Paula Stoll, Chief</b>	<b>444-3819</b>	<b><a href="mailto:pstoll@state.mt.us">pstoll@state.mt.us</a></b>
<b>Kevin McRae</b>	<b>444-3789</b>	<b><a href="mailto:kmcrae@state.mt.us">kmcrae@state.mt.us</a></b>
<b>Butch Plowman</b>	<b>444-3885</b>	<b><a href="mailto:bplowman@state.mt.us">bplowman@state.mt.us</a></b>
<b>Ruth Anne Hansen</b>	<b>444-3892</b>	<b><a href="mailto:rhansen@state.mt.us">rhansen@state.mt.us</a></b>